IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 66 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MOHMAD SALIM ABDUL MAJID

Appearance:

1. Criminal Appeal No. 66 of 1990

Ms.Hansa Punani, learned A.P.P. for Appellant No.

MR US BRAHMBHATT for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 15/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.P.DHOLAKIA)

#. This appeal has been preferred by the State under Section 378 of the Criminal Procedure Code against the

judgment and order of acquittal passed by the learned Additional City Sessions Judge, Court No.22, Ahmedabad, in Sessions Case No.147 of 1989 on 29.08.1989 wherein he has acquitted the present respondents.

#. The short facts of the prosecution case is that an information was received by PSI, Shri B.T.Karolia of Karanj Police Station on 23-2-1989 stating that a person named Mohmad Salim Abdul Majid of Chudiol sitting at Machhi Market, near Pani Parab, is in possession of brown sugar. He informed this information to PI, Shri K.B.Rathod. They called the panchas and went near three gates Machhi Market where a person of the description was found sitting there and hence, he was stopped and verified his name as Mohmad Salim Abdul Majid. On his personal search, one match box of Kapas brand was found from the left pocket of his pijama in which one padiki of brown sugar weighing 250 mgs. was found and in other pocket, one silver like paper and one 10 paise coin with black substance attached on one side of the coin were found. Since the said person had no pass or permit, match box containing brown sugar was sealed and slip signed by panchas was put on it and a seal of "Inspector of Police, Karanj, Ahmedabad City" was also placed on it. This muddamal and the other articles seized from him were put in a separate box which was also sealed and slip signed by panchas was put on it. Since the accused was tammering in speech and his eyes were red in colour, he was sent to Civil Hospital after drawing panchnama to that effect. During his interrogation, the name of the person from whom he got this brown sugar on 24-2-1989 at about 1.00 a.m. was revealed and hence, panchas were again called and they along with Mohmad Salim Abdul Majid went near Favourite Tailor. When they were separately hiding, one person from Pathankuwa side came and stopped in presence of panchas and hence, his search was made by PSI, Shri Karolia. From the front side pocket of his bush shirt, one match box of Globe Company containing 4 padikis of butter paper with 100 mg. of brown sugar weighing in all 400 mg. and a red purse containing Rs.276/- were found. These four padikis of brown sugar were sealed in presence of panchas and the slip signed by the panchas was put on it with the seal of "Inspector of Police, Karanj, Ahmedabad City". The said match box was put in a tin and was similarly sealed. Panchnama to that effect was also drawn. Both the accused were taken to Karanj Police Station and offence under the NDPS Act was registered against them. On completion of necessary investigations, accused were charge-sheeted. Thereafter, case was committed to the Court of Sessions with relevant papers and muddamal where charge Ex.3 was framed by the

learned Principal City Civil & Sessions Judge, Ahmedabad for the offence punishable under Section 21 of the Act and Section 66(i)(b) of the Bombay Prohibition Act. As the accused pleaded not guilty to the charge and prayed for trial, the prosecution examined oral witnesses and also placed reliance on the documents. Thereafter, further statements of the accused under Section 313 of the Criminal Procedure Code was recorded. After hearing the learned counsel for the respective parties, both the accused were acquitted vide the impugned judgment and order.

#. Heard the learned APP, Ms.H.B.Punani, for the appellant-State and learned counsel for the respondents, Mr.U.S.Brahmbhatt.

#. Ms.Punani has mainly argued that there is ample evidence on record to connect the accused with the crime in question which ought to have considered by the court below and accused ought not to have acquitted. It is further argued that the muddammal which is seized from the accused was properly kept in custody by P.S.O. and it has been handed over to Crime Writer Head and same has been kept in tact till it was sent to F.S.L. for the purpose of analyzing the same. For which she has taken us through the oral evidence of P.S.O., Shri Gamjibhai Mansinh, Crime Writer, Vamanrao Shankarrao and Police Constable, Jagdish Karnidan Gadhvi who have taken the muddammal in F.S.L. Taking us through the oral evidence of F.S.L. expert, Shri Dipakkumar Bhagwatlal Talati along with his report Ex.46, it is argued that the report of the FSL upon analyzing the muddammal in question sent to F.S.L. in tact condition shows to be a contraband article. The prosecution also gets support from the evidence of P.S.I., Shri Karolia and panch witnesses. She has fairly argued that there are some contradictions in the evidence of panch witness as well as in the oral evidence of P.S.I., Shri Karolia but is argued by her that above contradictions are minor ones and prosecution has examined the witnesses after a long period and only on such discrepancies, evidence ought not to have been discarded by the court below.

#. Learned advocate Mr.Brahmbhatt who appeared on behalf of the accused has taken us through the well reasoned judgment in question along with oral evidence of P.S.I., Shri Karolia, both the panchas together with the complaint and the panchnama. It is argued that as per the prosecution case, P.S.I., Shri Karolia has received the information in advance and it has not been reduced in writing by him. Moreover, while doing search and seizure

of the accused, P.S.I., Karolia has not informed the accused regarding their valuable right of search and seizure in the presence of a Gazetted officer or a Magistrate. It is also argued that the muddammal has not been weighed on the spot and thereafter also whatever weight is done, it has been done on the basis of estimate. The evidence on record shows that panchnama has not been prepared on the spot and process of sealing etc. has also not been done on the spot which, according to him, it is a material lacunae. Hence, considering all these lacunae, court below has rightly acquitted the accused and therefore, it is requested that the impugned judgment and order may not be interfered with.

#. We have carefully considered the arguments advanced by the learned counsel for the respective parties and also gone through the oral as well as the documentary evidence which has been shown to us by the learned counsel for the respective parties, more particularly, complaint, panchnama, oral evidence of P.S.I., Shri Karolia, who is the complainant and also I.O. along with the evidence of panchas. It appears from the FIR and the panchnama that the secret information received well in advance by P.I., Shri Karolia was not reduced in writing by him. The muddamal has not been properly weighed on the spot. Moreover, at the time of search and seizure, he has not followed the mandatory provisions of seeking the willingness of the accused of his valuable right of being searched in presence of a Gazetted Officer or a Magistrate and, therefore, there is a breach of mandatory provision of the NDPS Act. This aspect has been considered by the court below together with other aspects of the matter and keeping in mind the settled legal position, the accused were rightly acquitted by the court below. In this view of the matter and also in view of our agreement with the findings recorded by the court below, other points raised by the learned APP that muddamal remained in tact position with the Crime Writer Head till it reached to FSL and the FSL report shows the muddamal to be contraband article are not required to be dealt with.

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

> "....This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the

view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. Under the above circumstances, appeal is required to be dismissed and is accordingly dismissed.

(R.P.DHOLAKIA, J)

(SHARAD D DAVE, J)

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